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COMMISSIONER

*The Commonwealth of Massachusetts*  
*Department of Revenue*  
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May 14, 1984

("Company") manufactures for lease or rental computer terminals and other equipment used in a data retrieval system which functions as follows. The Company installs the equipment on the premises of a stock brokerage house. The equipment is connected by telephone lines to a host computer in New Jersey, in which the Company maintains current information on securities and commodities markets. Employees and customers at the stock brokerage use the terminals to call up information from the host computer, which is displayed on a screen at the terminals.

You inquire whether the Company's charges to a brokerage in connection with its use of the data retrieval system are subject to the sales or use tax.

You state that on its bills, the Company sets out separate charges for (1) the terminals and other computer equipment; and (2) retrieving the information from the host computer. It is assumed for purposes of this ruling that these separate charges are set in good faith and not to understate the amount that is subject to tax.

The Massachusetts sales and use taxes are excises imposed with respect to sales at retail of tangible personal property (G.L. c. 64H, § 2; G.L. c. 64I, § 2).

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"Sale" is defined for sales and use tax purposes as including:

"(a) Any transfer of title or possession, or both, exchange, barter, lease, rental, conditional or otherwise, of tangible personal property for a consideration, in any manner or by any means whatsoever.

[and]

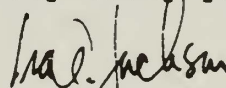
(f) The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons."

Subsection (5) of the Department of Revenue's sales and use tax regulation on automatic data processing (830 CMR 64H.06) provides:

"A transaction whereby a person secures access, by means of telephone or other lines, to equipment not on his premises, is not subject to tax if the person or his employees do not operate the equipment or direct and control its operation while on the premises where the equipment is located. However, the sale or lease of a computer terminal generally is subject to tax, even if the terminal is to be used by a customer on his premises in connection with remote processing activities not themselves taxable."

Based on the foregoing, it is ruled that the Company's charges for terminals and other computer equipment are rental or leasing charges subject to the sales or use tax. The Company's separate charges for the retrieval of information from the host computer are not subject to the sales or use tax if they are set in good faith.

Very truly yours,



Commissioner of Revenue